

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5809 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SANGAM PLASTIC CENTRE

Versus

PK TIWARI

Appearance:

MR SN SOPARKAR with Shri Dhiresh T.Shah for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 24/01/97

ORAL JUDGEMENT

(Per Rajesh Balia, J)

1. Rule. Service of rule is waived by learned counsel for the respondent. Heard learned counsel for the parties.

2. Petition is directed against the order dated 19.1.1996 passed by the Commissioner of Income Tax, Gujarat under Section 273-A of the Income Tax Act, 1961 rejecting the petitioner's application for waiver of interest under Section 139(8) and Section 215 and levy of penalty for late filing of returns under Section 271(1)(a) in respect of assessment year 1979-80 to 1983-84 for various sums on each count detailed in the order.

3. It has been found in the order itself that the assessee had filed returns of income voluntarily, and without issue of any notice under section 139(2) or 148 of the Act. It is also found that the assessee cooperated in the finalisation of the proceedings under the Income Tax Act. The only reason given in the order for rejecting it was that amount due on account of the penalties and interests have not been paid by the assessee and stay was operating only upto 25.2.1990. According to the Commissioner the pleadings of the assessee about making satisfactory arrangement for the payment of interest cannot be accepted because such satisfactory arrangement would require not just moving a stay petition, but more than that, that is taking an instalment facility and abiding by it and/or furnishing security to cover the demand, which has not been in this case. It was also observed that in any case after moving the stay petition for the last five years the assessee has not displayed absolutely any cooperation in the matter of payment of interest.

3. It is well settled that though power under Section 273-A is discretionary, but discretion has to be exercised judiciously and the vesting of this power is also coupled with duty to exercise it when condition for exercise of such power is shown to be existing. The three conditions which are required to be seen before power under Section 273A can be exercised are that firstly the assessee must have filed the returns voluntarily and without issuance of any notice under Section 139(2) or Section 148 of the Act and must have made full and true disclosure of his income. The second condition is that he must have cooperated in the investigation of the proceeding under the Income Tax Act and the third condition is that either the assessee must have paid the demand or must have made satisfactory arrangements for its payment. Admittedly, first two conditions have been satisfied. So far as the third condition is concerned it is to be noticed that the assessee must have either made payment or made satisfactory arrangement for the payment of any tax or

interest payable in consequence of the order passed under this Act in respect of relevant assessment year. This clearly goes to show that payment of the demands in respect of which waiver is sought is not a sine qua non and the assessee is entitled to claim the benefit of the provisions even if it has made satisfactory arrangement for its payment. Whether the assessee has made payment or not has to be determined by the Commissioner himself that is to say the satisfaction about the satisfactory arrangement of payment has to be determined by the Commissioner with reference to whether in his opinion any satisfactory arrangements have been made or not. This necessarily requires application of mind as to what arrangement assessee ought to have been made or can make to his satisfaction which would satisfy this requirement. The fact that as assessee has moved an application before the Income Tax Officer and has not been disposed of or an interim order passed in that respect has expired without extension does not detract from the fact that before disposition of the application, the Commissioner has to apply his mind and give an opportunity to the assessee to make arrangement for its payment to his satisfaction. In the present case, apparently this has not been done and the only ground which weighed with the Commissioner is that the assessee has not made any payment or has secured extension of the interim order after its expiry in February 1990. In this connection it may also be noticed that application for waiver was moved on 26th March, 1987 before moving application under Section 273A the assessee has already moved the Income Tax Officer on 19th February 1987 for grant of stay of recovery of the sums due. Once that application for stay has been made it was for the appropriate authority to have decided that application and it was not within the domain of the assessee to secure any particular order on that. It has also come on the record that in pursuance of that application written order was made only on 18th December, 1989 informing that stay order has been granted upto 25.2.1990 but no attempt for recovery of the sum during that period has been made. On the contrary the assessee had made applications on 1.6.1988, 6.10.88 and 30.3.1989 before the Commissioner for deciding his application on 26th March, 1987. That application was not to be decided until January 1996. It is apparent that upto 25.2.1990 there was an interim order in favour of the assessee from the recovery of the amounts due during this period and it could not have been said that assessee could still be required to make payment during that period, inspite of repeated request by the assessee no attempt was made by the Commissioner to dispose of the application under Section 273A and it was kept pended and it was only in January 1996 the

authority awakened to dispose of the application and on finding that after February 1990 there is no interim order in writing was made, hastened to dismiss the application on that ground. If this is permitted it would always be possible for an authority to keep the matter pending during the period when the conditions for exercise of the discretion are satisfied on the face of record and then to take up the matter for hearing only after something happened to warrant its rejection. It is neither the spirit nor the object of the provisions. Admittedly the application has not been dealt with in a reasonable manner to warrant its sustenance.

4. The petition is accordingly allowed. The impugned order is quashed and the Commissioner is directed to decide the application afresh in accordance with law within a period of two weeks after giving an opportunity to the assessee to make satisfactory arrangement for the payment of the sums due to his satisfaction.

Rule made absolute with no order as to costs.